

REMARKS

Prior to entry of this amendment, claims 1-17 are currently pending in the subject application. By the instant amendment, claims 1, 8, 9, and 13 have been amended, and claims 14-17 have been cancelled. Claims 1, 8, 9, and 13 are independent.

A. Introduction

In the outstanding Office Action Made Final, the Examiner rejected claims 1-17 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement; and rejected claims 1-17 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,326,618 to Kane et al. ("the Kane et al. reference").

B. Asserted Rejections of Claims 1-17

In the outstanding Office Action Made Final, the Examiner rejected claims 1-17 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. By the instant amendment claims 14-17 have been cancelled.

With respect to claims 1-13, applicants respectfully traverse this rejection, and respectfully submit that "generating data having a frequency from a plurality of portions of the image" is supported at least by FIGS. 3-4 and ¶¶ 43-44 of the original specification as filed. In particular, ¶ 43 refers to FIG. 3, which illustrates a single image, i.e., magnified image 33, having a plurality of portions, i.e., lines A, B, and C. Further, ¶ 44 refers to FIG. 4, which illustrates frequencies corresponding to lines A, B, and C in the magnified image 33. In other words, FIG. 4 illustrates frequencies from a plurality of portions of the magnified image 33. Accordingly, applicants submit that claims 1-13 comply with 35 U.S.C. § 112, first paragraph and, therefore, request withdrawal of the rejection.

C. Asserted Anticipation Rejection of Claims 1-17

In the outstanding Office Action Made Final, the Examiner rejected claims 1-17 under 35 U.S.C. § 102(e) as being anticipated by the Kane et al. reference. Applicants respectfully traverse this rejection, and respectfully submit that the Examiner has failed to set forth a *prima facie* case of anticipation for at least the reasons set forth below.

Independent claims 1, 8, 9, and 13, as supported at least by ¶ 47 of the original specification, have been amended to recite, *inter alia*, that the analysis of the generated data is performed “without using a separate reference sample.” The Kane et al. reference, on the other hand, does not teach or even remotely suggest data analysis without a reference sample. In fact, the Kane et al. reference refers to data analysis requiring a comparison between the analyzed sample to a known reference sample. *Kane et al.*, col. 5, lines 23-40; col. 8, lines 1-5.

In view of the above, applicants respectfully submit that the Kane et al. reference fails to teach or suggest each and every element of claims 1, 8, 9, and 13, and therefore, claims 1, 8, 9, and 13 are believed allowable over the cited prior art. The remaining rejected claims depend, directly or indirectly, from independent claims 1 or 9, and are believed to be allowable for at least the reasons set forth regarding claims 1 and 9. Accordingly, applicants respectfully request that the rejection of claims 1, 8, 9, and 13 and claims dependent thereon be favorably reconsidered and withdrawn.

D. Entry of Amendment Requested

Applicants respectfully submit that the pending claims are in condition for allowance, and that the instant amendments overcome the rejections set forth in the outstanding Office action. Accordingly, it is respectfully submitted that consideration of the instant amendment does not place an undue burden on the Examiner, and entry of the above amendment after final is respectfully requested.

E. Conclusion

The above remarks demonstrate the failings of the Examiner's arguments with respect to the outstanding rejection, and are sufficient to overcome them. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, applicants *do not* contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

If the Examiner believes that additional discussions or information might advance the prosecution of the instant application, the Examiner is invited to contact the undersigned at the telephone number listed below to expedite resolution of any outstanding issues.

In view of the foregoing amendments and remarks, reconsideration of this application is earnestly solicited, and an early and favorable further action upon all the claims is hereby requested.

Respectfully submitted,

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PÉTITION and
DEPOSIT ACCOUNT CHARGE AUTHORIZATION

This document and any concurrently filed papers are believed to be timely. Should any extension of the term be required, applicant hereby petitions the Director for such extension and requests that any applicable petition fee be charged to Deposit Account No. 50-1645.

If fee payment is enclosed, this amount is believed to be correct. However, the Director is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-1645.

Any additional fee(s) necessary to effect the proper and timely filing of the accompanying-papers may also be charged to Deposit Account No. 50-1645.